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MERCK & CO., INC.

OFFICE OF PETITIONS

In re Application of : DECISION ON PETITION
Steven Ludmerer :
Application No. 10/577,893 :
Deposited: May 1, 2006 :
Attorney Docket No. 21564Y :

This is in response to the Petition to Withdraw the Holding of Abandonment filed September 21, 2010.

The above-identified application became abandoned for failure to timely or properly file a reply to the NOTIFICATION TO COMPLY WITH REQUIREMENTS FOR PATENT APPLICATION CONTAINING NUCLEOTIDE AND/OR AMINO ACID SEQUENCE DISCLOSURES mailed January 5, 2007. This Notice set a two-month time limit for reply, with extensions of time obtainable under § 1.136(a). No reply considered filed and no extension of time considered obtained, the application became abandoned effective March 6, 2007. A courtesy Notice of Abandonment was mailed on August 18, 2010.

In response, applicant filed the instant petition. Applicant maintains that a response was timely filed on January 24, 2007. Applicant states that the response was filed via Express Mail and is shown on the Patent Application Information Retrieval System as having arrived and been scanned into the system on January 26, 2007.

Preliminarily, it is noted that the instant petition was filed more than 3 years after the abandonment of the application. Applicant is encouraged to utilize PAIR to monitor the status of pending applications. A petition under 1.181 to withdraw the holding of abandonment may be dismissed without consideration on the merits for failure to timely file the petition within 2 months of the mailing of the notice of abandonment (or within 12

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months of the filing of a paper for which applicant would expect further action). Under the circumstances of this case, discretion will be exercised in favor of applicant and the petition considered on the merits. However, the delay in filing the petition may cause any patent term adjustment to be reduced under the provisions of 37 CFR 1.704(c)(4). See *Petitions to Withdraw Holding of Abandonment*, June 22, 2004; MPEP 711.03(c) IIIC.

Consideration of petitioner's evidence is unnecessary. Their timely response is present in the application with a date of receipt of January 26, 2007. There is no indication in the record of deficiency in this response.

Accordingly, the holding of abandonment is hereby WITHDRAWN.

The petition under § 1.181 is GRANTED.

No fee is required on petition under § 1.181.

The Office of Patent Application Processing has been advised of this decision. The application is, thereby, returned to the Office of Patent Application Processing for completion of pre-examination processing, including processing the response timely filed January 26, 2007.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3219.


Nancy Johnson
Senior Petitions Attorney
Office of Petitions